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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPAANY APPLICATION No. 562 OF 2006
IN
COMPANY PETITION NO. 213 OF 1973

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| Office Notes, Office Memorandum of Coram, appearance, Court's orders or directions and Registrar's orders | : | Court's or Judge's orders |

Mr. Mukul Tally with Ms. Deepali Wakde i/b S. B. Parekh, advocates for the Applicant.

Mrs. K. B. Gautam, Dy. Official Liquidator.

CORAM : D. B. BHOSALE, J.

DATE : SEPTEMBER 20,2007

PC

. Heard learned counsel for the petitioner and Mrs. K. B. Gautam, the Dy. Official Liquidator. This Application has been instituted for a permanent stay of the winding up proceedings in the exercise of the powers conferred by the provisions of Section 466 of the Companies Act, 1956. On 22nd March 2007, this Company Application was placed before the learned Single Judge, when the Official Liquidator was directed to carry out

certain further requisitions. Relevant part of the order reads thus-

> First, the Official Liquidator is directed to issue a further advertisement in the Indian Express, Loksatta and Mumbai Sakal inviting claims from the creditors of the Company. This exercise shall be carried out within a period of four weeks from today. Second, the Liquidator shall, at the expense of the Applicant engage the services of a Chartered Accountant from the panel of the Liquidator for assessing the estimated tax liabilities on the land cost likely to arise inter alia upon the sale of the land of the Company at Ovale. Third, the liquidator shall verify the correctness of the statement made on behalf of the applicant that the entire share capital is held by the applicant and by his wife. The Liquidator shall after the aforesaid exercise is

completed, submit a further report to this Court so as to enable the Court to consider the Company Application.

2. It appears that pursuant to the order passed by the learned Single Judge, dated 22nd March 2007, the Official Liquidator has filed two reports. First report is dated 8th June 2007. In the said report a categoric statement has been made that in response to the notice, inviting claims, published in the newspaper, as per the directions dated 22nd March 2007, the Official Liquidator has not received any claim from any of the creditors. Similarly none of the creditors have come forward to oppose the prayer in the appeal. It appears that insofar as the tax liabilities as mentioned in paragraph 5 of the report (dated 8th June 2007), the applicant had raised a serious dispute and in view thereof the earlier report was disposed of, vide order dated 5th July 2007, with the following directions-

"According to the Chartered Accountant appointed by the Official Liquidator, the estimated tax liability is 19,47,060. This liability, I am informed, that the applicant has disputed vide letter dated 2-7-07. None appears for the applicant. Insofar as the third direction to the Liquidator to verify the correctness of the statement made on behalf of the applicant that entire share capital is held by the applicants and by his wife is concerned, the Official Liquidator could not find out the said information. The applicant, however, filed, with a letter dated 2.7.07, zerox copies of the share certificates. The Liquidator shall verify the share certificates and submit a report in respect thereof within two weeks so as to enable the Court to consider the company application finally.

Insofar as the dispute raised by the

applicant vide his letter dated 2.7.07 in respect of the tax liability is concerned, the Official Liquidator to seek opinion of the Chartered Accountant and submit a report thereof within two weeks from today."

3. In pursuance of the order dated 5th July 2007, the Official Liquidator has filed the report dated 16th August 2007. A Perusal of the report shows that there is no tax liability on the land cost likely to arise, inter alia, upon the sale of the land of the Company at Ovale.

4. Insofar as the directions issued in the order dated 22-3-2007 is concerned, the applicant has filed affidavit dated 5-9-2007 in reply to the report dated 16th August 2007, has clearly stated that the entire share capital is held by him and his wife. The relevant paragraphs 5, 6, 7 and 11 reads thus-

"5. I say that on August 8, 1973 a scheme of compromise and/or

arrangement under Section 391 of the Companies Act 1956 was proposed. At the time of the submission of this Scheme itself, my wife and I had purchased all the equity shares of the Company in liquidation. This was done in order to facilitate the submission and piloting of such a Scheme. The Scheme could not work out and ultimately the winding up order dated June 23, 1975 came to be passed in respect of the Company in liquidation. Since then, my wife and I have been the holders/ owners of 100% shares of the Company in liquidation.

6. I say that today the equity shares pertaining to 100% shareholding of the Company in liquidation are held/owned by my wife and myself. I say that about 25 to 34 years back these share certificates were stored along with

other articles in the garage of my residence. As the Company in liquidation was in winding-up since June 23, 1975, I did not pay any particular attention to the safe keeping of these share certificates. After the order dated March 22, 2007 was made, I have carried out a diligent search for the share certificates at the garage and all other likely places where I may hae placed these share certificates for safe-keeping. I have produced all the share certificates as could be traced from the garage. I have been unable to locate the other share certificates despite such diligent search.

7. I say that I have neither hypothecated nor pledged any share certificates of the Company in liquidation with any lender (if at all that is possible). My wife and I are

the sole holders/owners of all the shares corresponding to the lost/ misplaced/missing share certificates.

11. I undertake to this Hon'ble Court that I will keep the Official Liquidator, High Court, Bombay as liquidator of Bharat Swiss Footwear Co. Private Ltd. (in liquidation) and his successors and assigns fully indemnified from and against all notices, claims and demands of any third party claiming ownership of any shares of the Company in liquidation and shall keep such liquidator and his successors and assigns saved and harmless against all suits, petitions, applications or legal proceedings in respect of such ownership of any shares of the Company in liquidation and all costs, charges and expenses that such liquidator might be required to bear, expend or disburse for instituting or defending the same."

5. After having considered contentions urged by the learned counsel for the parties and having regard to the facts and circumstances of the case and more particularly the report of the Official Liquidator dated 16th August 2007 and the reply of the applicant dated 5th September 2007, I find no reason to reject the prayer made in the Application. It appears that all the requisitions as per the order dated 22nd March 2007 passed by the learned Single Judge, stand fulfilled. The statements made on affidavit and the undertaking given by the applicant in their affidavit in reply dated 5-9-2007 in respect of the share certificates are accepted. In the circumstances, this Company Application is made absolute in terms of prayer Clause (a) and (b). It is needless to express that the Liquidator shall comply with the order in terms of prayer Clause (b) after deducting the expenses incurred by them so far; so also this order is subject to the undertaking given by the applicant in paragraph 11 of the affidavit, dated 5th

September 2007.

6. The Company Application accordingly stands disposed off.

[ D. B. BHOSALE, J.]